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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3924

12 **JENNIFER LEDORON GALAVIZ**
16153 Menahka Rd.
13 Apple Valley, CA 92307

A C C U S A T I O N

14 Pharmacy Technician License No. TCH 76816

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

21 2. On or about June 28, 2007, the Board issued Pharmacy Technician License No. TCH
22 76816 to Jennifer Ledoron Galaviz (Respondent). The Pharmacy Technician License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on December
24 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 **STATUTORY PROVISIONS**

5 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 6. Section 490 states:

10 "(a) In addition to any other action that a board is permitted to take
11 against a licensee, a board may suspend or revoke a license on the ground that the
12 licensee has been convicted of a crime, if the crime is substantially related to the
qualifications, functions, or duties of the business or profession for which the
license was issued.

13 (b) Notwithstanding any other provision of law, a board may exercise
14 any authority to discipline a licensee for conviction of a crime that is independent
15 of the authority granted under subdivision (a) only if the crime is substantially
related to the qualifications, functions, or duties of the business or profession for
which the licensee's license was issued.

16 (c) A conviction within the meaning of this section means a plea or
17 verdict of guilty or a conviction following a plea of nolo contendere. Any action
18 that a board is permitted to take following the establishment of a conviction may
19 be taken when the time for appeal has elapsed, or the judgment of conviction has
been affirmed on appeal, or when an order granting probation is made suspending
the imposition of sentence, irrespective of a subsequent order under the provisions
of Section 1203.4 of the Penal Code."

20 7. Section 492 states:

21 "Notwithstanding any other provision of law, successful completion of any diversion
22 program under the Penal Code, or successful completion of an alcohol and drug problem
23 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
24 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
25 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
26 division, from taking disciplinary action against a licensee or from denying a license for
27 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
28 record pertaining to an arrest.

1 8. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
2 license issued by the Board.

3 9. Section 4301 states, in pertinent part:

4 "The board shall take action against any holder of a license who is guilty of unprofessional
5 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
6 Unprofessional conduct shall include, but is not limited to, any of the following:

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8 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
9 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
10 whether the act is a felony or misdemeanor or not.

11 "(g) Knowingly making or signing any certificate or other document that falsely
12 represents the existence or nonexistence of a state of facts.

13 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
14 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
15 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
16 to the extent that the use impairs the ability of the person to conduct with safety to the public the
17 practice authorized by the license.

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19 "(j) The violation of any of the statutes of this state, or any other state, or of the United
20 States regulating controlled substances and dangerous drugs.

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22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment. . . ."

11 10. Section 4060 states:

12 "No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
21 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer.

23 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
25 devices."

26 11. Section 1210.1(e)(3) of the California Penal Code provides that the dismissal of a
27 complaint or indictment pursuant to the successful completion of a diversion program under the
28 Penal Code does not relieve an applicant "of the obligation to disclose the arrest and conviction in

1 response to any direct question contained in any questionnaire or application . . .for licensure by
2 any state or local agency”

3 **REGULATORY PROVISION**

4 12. California Code of Regulations, title 16, section 1770 states:

5 "For the purpose of denial, suspension, or revocation of a personal or facility license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
9 licensee or registrant to perform the functions authorized by his license or registration in a manner
10 consistent with the public health, safety, or welfare."

11 **DRUG STATUTES**

12 13. Methamphetamine is a Schedule II controlled substance as designated by California
13 Health and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to
14 Business and Professions Code 4022.

15 14. Marijuana is a Schedule I controlled substance as designated by California Health and
16 Safety Code section 11054(d)(13) and is categorized as a dangerous drug pursuant to Business
17 and Professions Code 4022.

18 15. California Health and Safety Code section 11550(a) prohibits the non-prescription use
19 of controlled substances.

20 16. California Health and Safety Code section 11177, subdivision (a), states:

21 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
22 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
23 Business and Professions Code, every person who possesses any controlled substance which is . .
24 . (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a
25 physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished
26 by imprisonment in a county jail for a period of not more than one year or in the state prison."

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1 **COST RECOVERY**

2 17. Section 125.3 states, in pertinent part, that the Board may request the administrative
3 law judge to direct a licensee found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Criminal Conviction)**

8 18. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
9 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
10 that Respondent was convicted of a crime which is substantially related to the qualifications,
11 functions, or duties of a pharmacy technician, as follows:

12 19. On or about May 8, 2007, in the criminal matter *People of the State of California vs.*
13 *Jennifer Ledoron Galaviz* (Super. Ct. County of San Bernardino, 2007, No.FVI700843),
14 Respondent entered a plea of nolo contendere and was convicted of felony violation of California
15 Penal Code section 273(a), willful cruelty to child/possible injury or death. A second charge for
16 felony violation of California Health and Safety Code section 11379, unlawful transportation of
17 controlled substance, was dismissed pursuant to a plea agreement.

18 20. The basis for Respondent's conviction for felony child endangerment was that on or
19 about April 27, 2007 Respondent's husband was arrested for illegal transportation of a controlled
20 substance (methamphetamine). Immediately thereafter, the San Bernardino Sheriff's Office
21 executed a search warrant at Respondent's apartment. During their search of Respondent's
22 apartment, officers located methamphetamine, marijuana, drug paraphernalia and loaded firearms.
23 Because these items were found to be within reach of the five children who resided at the
24 apartment with Respondent, and due to filthy living conditions at the apartment, Respondent was
25 arrested and later convicted of violation of California Penal Code section 273(a), willful cruelty to
26 child/possible injury or death.

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1 21. Pursuant to this conviction, Respondent was placed on probation for a period of 48
2 months and ordered to participate in child abuse counseling and to attend Narcotics Anonymous
3 meetings as directed by her probation officer.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unlawful Possession of Controlled Substances)**

6 22. Respondent is subject to disciplinary action under section 4060 of the Code in that at
7 the time of her arrest for child endangerment Respondent unlawfully possessed controlled
8 substances. The circumstances are as follows:

9 23. On or about April 27, 2007 the San Bernardino Sheriff's Office executed a search
10 warrant at Respondent's apartment. During their search of Respondent's apartment, officers
11 located methamphetamine and marijuana. At that time, Respondent acknowledged to officers
12 that she had been involved in the unlawful distribution of methamphetamine.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Controlled Substances)**

15 24. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
16 she used a controlled substance in a manner injurious to herself and others and to an extent that
17 impaired her ability to conduct with safety to the public the work of a licensed pharmacy
18 technician. The circumstances are as follows:

19 25. On or about April 27, 2007 the San Bernardino Sheriff's Office executed a search
20 warrant at Respondent's apartment. During their search of Respondent's apartment, officers
21 located methamphetamine, marijuana, drug paraphernalia and loaded firearms. Because these
22 items were within reach of the five children who resided with Respondent at the apartment, and
23 because of the filthy living conditions observed by the officers, Respondent was arrested for child
24 endangerment. At that time, Respondent acknowledged to officers that she had recently used
25 methamphetamine.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Drug Statute Violations)**

3 26. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
4 Respondent violated state and federal statutes regulating controlled substances and dangerous
5 drugs. The circumstances are as follows:

6 27. On or about April 27, 2007 the San Bernardino Sheriff's Office executed a search
7 warrant at Respondent's apartment. During their search of Respondent's apartment, officers
8 located methamphetamine and marijuana. At that time, Respondent acknowledged to officers
9 that she had recently used methamphetamine and had also been involved in the unlawful
10 distribution of methamphetamine.

11 **PRAYER**

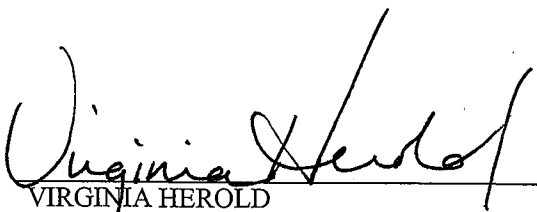
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician License No. TCH 76816, issued to
15 Jennifer Ledoron Galaviz;

16 2. Ordering Jennifer Ledoron Galaviz to pay the Board the reasonable costs of the
17 investigation and enforcement of this case, pursuant to section 125.3; and

18 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: 4/18/11

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23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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